

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA</p> <p>3 MICHAEL W. HILL, et al., : C.A. No. 05-160 Erie 4 Plaintiff : C.A. No. 03-323 Erie 5 : C.A. No. 03-355 Erie 6 v. : C.A. No. 03-368 Erie 7 : C.A. No. 04-011 Erie 8 JOHN J. LAMANNA, et al., : 9 Defendants :</p> <p>10 Deposition of MARTIN SAPKO, taken before and 11 by Janis L. Ferguson, Notary Public in and for the 12 Commonwealth of Pennsylvania, on Tuesday, December 13 19, 2006, commencing at 11:51 a.m., at the offices 14 of Knox McLaughlin Gornall & Sennett, PC, 120 West 15 10th Street, Erie, Pennsylvania 16501.</p> <p>16 For the Plaintiffs: Richard A. Lanzillo, Esquire Knox McLaughlin Gornall & Sennett, PC 120 West 10th Street Erie, PA 16501</p> <p>17 For the Defendants: Michael C. Colville, Esquire, AUSA Office of the United States Attorney 700 Grant Street, Suite 4000 Pittsburgh, PA 15219</p> <p>18 Douglas Goldring, Esquire Federal Prison Industries (UNICOR) 400 First Street NW Washington, DC 20534</p> <p>19 Reported by Janis L. Ferguson, RPR, CRR Ferguson & Holdnack Reporting, Inc.</p>	<p>Page 1</p> <p>1 M A R T I N S A P K O, first having been 2 duly sworn, testified as follows:</p> <p>3</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. LANZILLO:</p> <p>6</p> <p>7 Q. Mr. Sapko, my name is Rich Lanzillo. I represent 8 the Plaintiffs in these various related actions. I have 9 scheduled your deposition today to ask you some questions 10 primarily concerning conditions at the UNICOR facility at 11 FCI McKean.</p> <p>12 Both my questions and your responses will 13 ultimately be transcribed by Janis, our court reporter. To 14 ensure that the transcript is clear, I would ask that you 15 respond to each of my questions verbally, as opposed to 16 shaking your head. Janis can miss that, and we could end up 17 with an incomplete transcript.</p> <p>18 Also, if you're going to answer my question in the 19 affirmative, I'd ask you to use the word "yes", and if 20 you're going to answer in the negative, use the word "no". 21 Words or phrases like "uh-huh" or "huh-uh" are often 22 ambiguous on the record.</p> <p>23 And, finally, most importantly, if at any time you 24 do not hear my question clearly or if you do not understand 25 it, because of the way I phrased it, let me know that. I'll</p>
<p>1 I N D E X</p> <p>2</p> <p>3 TESTIMONY OF MARTIN SAPKO</p> <p>4 Direct examination by Mr. Lanzillo 3</p> <p>5 Cross-examination by Mr. Colville 28</p> <p>6 Redirect examination by Mr. Lanzillo 32</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 be happy to repeat or rephrase the question. Is that fair 2 enough?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Would you state your full name, please.</p> <p>5 A. Martin Andrew Sapko.</p> <p>6 Q. What is your current address?</p> <p>7 A. 603 West Gordon Street, Bradford, Pennsylvania.</p> <p>8 Q. How are you presently employed?</p> <p>9 A. I'm employed at the -- I'm presently the 10 superintendent of industries at FCI McKean.</p> <p>11 Q. How long have you held the position of 12 superintendent of industries?</p> <p>13 A. Two weeks.</p> <p>14 Q. How long have you been employed at FCI McKean?</p> <p>15 A. 17 -- about -- over 17 and a half years. I think 16 1989.</p> <p>17 Q. Prior to becoming the superintendent of 18 industries, what was your job title?</p> <p>19 A. I was a factory manager.</p> <p>20 Q. And how long were you factory manager?</p> <p>21 A. Approximately seven years. Since 2000.</p> <p>22 Q. What was your title prior to factory manager?</p> <p>23 A. Assistant factory manager.</p> <p>24 Q. How long did you hold that position?</p> <p>25 A. I think three years.</p>

1 (Pages 1 to 4)

<p style="text-align: right;">Page 5</p> <p>1 Q. And prior to being -- becoming the assistant 2 factory manager, did you have a position? 3 A. I was a warehouse supervisor. 4 Q. The position of superintendent of industries, was 5 that a promotion? 6 A. Yes. 7 Q. What is the extent of your education? 8 A. I had high school, I had one year of college, and 9 then I went to a vocational community college. 10 Q. Where did you graduate from high school? 11 A. Bradford Central Christian High School. 12 Q. When did you graduate from high school? 13 A. 1973. 14 Q. You indicated that you attended one year of 15 college? 16 A. Yes. 17 Q. Where did you go? 18 A. Lock Haven State College. 19 Q. What did you study when you were there? 20 A. I was in physical education. 21 Q. And then you attended vocational college? 22 A. Yes. Williamsport Community College. 23 Q. Did you receive a degree, certificate -- 24 A. Certificate degree. 25 Q. And what was the subject matter of your</p>	<p style="text-align: right;">Page 7</p> <p>1 operated the filtration to the water system, chlorination to 2 the water system. 3 Q. How long did you work at Witco Chemical? 4 A. I think a little over five years. 5 Q. How long did you work at Bradford City water? 6 A. Off and on. I think the longest I worked was 7 seven years. Some of it was part-time, some of it was 8 full-time. 9 Q. Was there any formal safety and health training at 10 either Witco Chemical or Bradford City water department? 11 A. I don't remember it at the water department. I 12 don't really remember it at Witco, but there possibly could 13 have been. 14 Q. What were your job responsibilities as the factory 15 manager at FCI McKean? 16 A. Production, scheduling, ordering materials. 17 Q. Did you have any responsibilities relative to 18 Occupational Safety and Health? 19 A. No. Everybody has to make sure the place is safe. 20 Q. Who is your immediate supervisor? 21 A. Debbie Forsyth. 22 Q. And did you have any employees who reported 23 directly to you? 24 A. Yes. 25 Q. Who were they?</p>
<p style="text-align: right;">Page 6</p> <p>1 certificate? 2 A. Constructional carpentry. 3 Q. Was that a two-year program? 4 A. Yes. 5 Q. Prior to joining FCI McKean, did you receive any 6 training in the area of safety and health? 7 A. Probably at one of my other -- my other jobs at 8 Witco Chemical Corporation. 9 Q. Yeah. Where did you work before you joined FCI 10 McKean? 11 A. Right prior to? 12 Q. Yes. Witco? 13 A. Witco. Witco Chemical. 14 Q. What was your position there? 15 A. I worked at the baggage plant, packaging up oil 16 products, shipping and receiving. 17 Q. You weren't responsible for occupational health or 18 safety, were you? 19 A. No. At there? No. 20 Q. Basically a laborer's position? 21 A. Yes. 22 Q. Prior to Witco Chemical, where did you work? 23 A. I worked for the Bradford City water department. 24 Q. What was your position there? 25 A. Variety of things. I was a laborer mostly. I</p>	<p style="text-align: right;">Page 8</p> <p>1 A. All the foremen on the floor. Except for the -- 2 well, the night shift, there was a supervisor of the night 3 shift crew. 4 Q. Relative to Mr. Housler, where did you fit into 5 the organizational chart at FCI McKean, UNICOR facility, 6 when you were factory manager? 7 A. To Mr. Housler? 8 Q. Yeah. Did you have any direct reporting or -- 9 A. Just if we had any kind of safety issues or 10 anything. He didn't exactly work for UNICOR. 11 Q. Okay. If you had safety issues, though, was it 12 policy or procedure that you would report them to 13 Mr. Housler? 14 A. I would report it to my supervisor, and I would 15 report it to Mr. Housler, if there was anything. 16 Q. And by your supervisor, you mean Miss Forsyth? 17 A. Miss Forsyth. 18 Q. During your tenure as factory manager at the 19 UNICOR facility, did you ever report any occupational health 20 or safety issues to Ms. Forsyth or Mr. Housler? 21 A. The only one that I reported was the one that 22 Mr. English wrote about with Mr. Bevevino. 23 Q. And to whom did you report that? 24 A. I reported it to Miss Forsyth. 25 Q. Did you discuss it with Mr. Housler?</p>

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<p style="text-align: right;">Page 9</p> <p>1 A. Not that I can remember.</p> <p>2 Q. And in your own words, what was the nature of the</p> <p>3 issue that Mr. English reported to you regarding</p> <p>4 Mr. Behevino?</p> <p>5 A. Well, that he had -- that OSHA had come in on --</p> <p>6 like around April 16th, and they were looking for certain</p> <p>7 MSDS sheets in our MSDS book, and they couldn't find them in</p> <p>8 the right place. So Mr. English talked to Mr. Behevino when</p> <p>9 he came in that night and told them that they couldn't find</p> <p>10 them, and he said that Mr. Behevino got very defensive, and</p> <p>11 that you guys were all pussies around here, and if you guys</p> <p>12 aren't going to do something about it, I am.</p> <p>13 Q. Was it related to you by Mr. English that</p> <p>14 Mr. Behevino had concerns about materials being released</p> <p>15 from Micore board when it was being used in the facility?</p> <p>16 A. I don't know if he specifically said Micore board</p> <p>17 or not. He just said there's materials here that have</p> <p>18 carcinogenic in it.</p> <p>19 Q. And after Mr. English reported that information to</p> <p>20 you, did you convey it to Ms. Forsyth?</p> <p>21 A. I think Mr. English conveyed it to both of us in a</p> <p>22 memo.</p> <p>23 Q. And did you discuss it with Miss Forsyth?</p> <p>24 A. I would have discussed it with Miss Forsyth.</p> <p>25 Q. And what did she say in response to the</p>	<p style="text-align: right;">Page 11</p> <p>1 regularly work with that Micore board, would they not?</p> <p>2 A. Certain areas would.</p> <p>3 Q. Sawing and cutting of Micore board took place</p> <p>4 within the facility?</p> <p>5 A. Yes, it did.</p> <p>6 Q. Did you ever observe those operations while you</p> <p>7 were plant manager?</p> <p>8 A. Well --</p> <p>9 Q. Factory manager.</p> <p>10 A. Sometimes I would be walking through the factory</p> <p>11 and --</p> <p>12 Q. Do you have an office?</p> <p>13 A. Yes.</p> <p>14 Q. Where was that located?</p> <p>15 A. Up in the mezzanine, above the factory floor.</p> <p>16 Q. And how often were you present on the factory</p> <p>17 floor itself?</p> <p>18 A. I'd try to get down to the floor a couple times a</p> <p>19 day. Usually first thing in the morning when I got there,</p> <p>20 I'd try to go around and see what the night shift might have</p> <p>21 done. And then probably sometime after lunch I would try to</p> <p>22 get down, if I had enough time.</p> <p>23 Q. Did your responsibilities include monitoring</p> <p>24 production and schedules and the like?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 10</p> <p>1 information?</p> <p>2 A. I don't remember specifically.</p> <p>3 Q. Did you report that information to Ms. Forsyth</p> <p>4 shortly after Mr. English conveyed it to you?</p> <p>5 A. I think Mr. English had given Miss Forsyth a memo,</p> <p>6 so she would have had it also.</p> <p>7 Q. Did you discuss that information with Ms. Forsyth</p> <p>8 shortly after you received the memo from Mr. English?</p> <p>9 A. I possibly could have. I don't remember it</p> <p>10 offhand.</p> <p>11 Q. You don't remember the timing?</p> <p>12 A. No.</p> <p>13 Q. Do you remember any of the substance of your</p> <p>14 conversation with Ms. Forsyth regarding the information</p> <p>15 conveyed by Mr. English, either verbally or in the form of a</p> <p>16 memo?</p> <p>17 A. No.</p> <p>18 Q. When the UNICOR facility at FCI McKean</p> <p>19 manufactured furniture products --</p> <p>20 A. Um-hum.</p> <p>21 Q. -- it utilized materials known as Micore board --</p> <p>22 A. Yes.</p> <p>23 Q. -- is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. And the inmates within the facility would work,</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. On the occasions that you were present on the</p> <p>2 factory floor, you did periodically see inmates cutting the</p> <p>3 Micore board?</p> <p>4 A. Yes.</p> <p>5 Q. All right. On the occasions that you observed</p> <p>6 inmates cutting the Micore board, did you notice how many</p> <p>7 boards at a time they would cut?</p> <p>8 A. I think they could cut anywhere from one to four</p> <p>9 boards, depending on the thickness that they would cut,</p> <p>10 depending on -- we had two different sizes of Micore that we</p> <p>11 used different times throughout the --</p> <p>12 Q. So the number of boards would vary?</p> <p>13 A. Yes.</p> <p>14 Q. And when you observed the inmates cutting the</p> <p>15 Micore board, were the inmates wearing any type of a mask?</p> <p>16 A. Some of them would wear a dust mask, if they</p> <p>17 wanted it.</p> <p>18 Q. You say "if they wanted it". What do you mean by</p> <p>19 that?</p> <p>20 A. It was optional. If they wanted it. Because we</p> <p>21 had a dust-collection system.</p> <p>22 Q. The inmates were not required to wear a mask? It</p> <p>23 was purely their option?</p> <p>24 A. No, I think OSHA, after they came in, they said</p> <p>25 they could recommend that they could wear a mask.</p>

<p style="text-align: right;">Page 13</p> <p>1 Q. What about goggles? Were they required to wear 2 goggles? 3 A. They are supposed to wear safety glasses, 4 steel-toed shoes, and in certain places, hearing protection. 5 Q. By safety glasses, I'm contrasting that with 6 goggles that form-fit around the eye. These were just the 7 standard safety glasses, plastic, that would sit on the 8 face? 9 A. Yes. 10 Q. All right. Prior to OSHA's inspection, which I 11 believe commenced in or around April of 2003, what did you 12 know about Micore board? 13 A. Probably not a lot of it. 14 Q. Did you receive any training regarding the 15 composition of Micore board? 16 A. No. 17 Q. In your observations of inmates working with 18 Micore board, particularly in a sawing type of operation, 19 did you notice that that operation generated dust? 20 A. I never saw any dust. 21 Q. You never saw any dust from the cutting of Micore 22 board? 23 A. Not when I was around there, no. 24 Q. Did you ever see dust on the clothing of an 25 inmate?</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. Do you have any reason to believe that that 2 occurred? 3 A. I imagine it could have occurred, yes. 4 Q. There was no -- you're not aware of any policy 5 prohibiting that, are you? 6 A. No. I don't think they were supposed to, but I 7 don't think there was anything in policy. 8 Q. What about blowing dust off of their clothing? 9 Was there any policy in place to prohibit that? 10 A. They weren't supposed to, but I never saw it. 11 Q. Did you ever sit in on any training sessions or 12 attend any training sessions where there was a discussion 13 that that was not appropriate? 14 A. Not that I can remember. 15 Q. Did you ever review the MSDS sheet for Micore 16 board? 17 A. Yes. 18 Q. When is the first time that you reviewed the MSDS 19 sheet for Micore board? 20 A. When there was a complaint about it. 21 Q. When was there a complaint? 22 A. When Michael Hill complained. 23 Q. Do you recall the year that that occurred? 24 A. It would have been right around the OSHA time. 25 Q. Prior to Michael Hill's complaint, had you</p>
<p style="text-align: right;">Page 14</p> <p>1 A. No. 2 Q. How about on the table saw itself? 3 A. There could be possibly some dust, but not very 4 much. 5 Q. Did you ever see inmates sweeping up dust from the 6 floor around the tables? 7 A. Yeah, they would be sweeping. 8 Q. Okay. And when they would sweep it up, would they 9 put it into piles? 10 A. They could sweep it into piles and put it in the 11 dumpster. 12 Q. Where did you think that dust was coming from? 13 A. Could be coming from particle board, could be 14 coming from Micore, I guess. 15 Q. And did you ever see dust in the hair, on the face 16 of an inmate? 17 A. No. 18 Q. Did you ever see inmates using the pneumatic or 19 air pressure devices to blow the dust off of equipment or 20 themselves? 21 A. No, I didn't. But the foremen told me they could 22 blow dust from underneath some of the bigger machines. 23 Q. What about on top of the machines? Could they do 24 that? 25 A. I never saw them doing it, no.</p>	<p style="text-align: right;">Page 16</p> <p>1 reviewed the MSDS sheet for Micore board? 2 A. No. 3 Q. Prior to Michael Hill's complaint, what, if 4 anything, did you know regarding any health hazards or 5 health effects associated with silica dust, Perlite, or any 6 other material that could be generated from the cutting of 7 Micore board? 8 A. Can you state that again? I missed the first 9 part. 10 Q. Sure. What knowledge did you have, if any, 11 regarding any health hazards or health effects associated 12 with Micore board prior to Mr. Hill's Complaint? 13 A. Just whatever I would hear on TV or something 14 about silica dust. 15 Q. You understood at least generally that silica dust 16 could cause health problems? 17 A. Yes. 18 Q. And you were aware, were you not, that silica dust 19 was one of the by-products from cutting Micore board, 20 weren't you? 21 A. Yes. After reading the report, yes. 22 Q. Did you know that silica dust was a by-product of 23 Micore board prior to the OSHA inspection? 24 A. No. 25 Q. Prior to Mr. Hill's complaint, had there been any</p>

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<p style="text-align: right;">Page 17</p> <p>1 complaints regarding dust, air quality, or anything 2 associated with Micore board? 3 A. There was a complaint. I believe it was an 4 anonymous complaint back in 2001. 5 Q. Do you know who originated the complaint back in 6 2001? 7 A. No idea. 8 Q. After the complaint in 2001, and before the OSHA 9 inspections, did you review any of the MSDS sheets? 10 A. Before when? 11 Q. Between the Complaint that was received in 2001 12 and the OSHA inspection in 2003, did you review any MSDS 13 sheets? 14 A. No. 15 Q. Am I correct that to your knowledge, the UNICOR 16 facility did not provide any training to inmates regarding 17 any potential health hazards associated with the cutting of 18 Micore board? 19 A. Not that I can remember. 20 Q. The use of masks in the facility, that was purely 21 optional on the part of the -- 22 A. Yes. They were available to anybody that wanted 23 one. 24 Q. But it was purely their option, was it not? 25 A. Yes.</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. So loose-fitting clothing could get caught in the 2 operational part of the machine -- 3 A. Yes. 4 Q. -- and pull the person's arm into -- 5 A. Yes. 6 Q. Okay. Other than that, were there any other 7 requirements for clothing? 8 A. No, not that I can think of. 9 Q. Are you familiar with a material known as Lokweld 10 860/861? 11 A. Yes. 12 Q. Okay. What is your understanding as far as that 13 substance? 14 A. It's a glue we use for our post forming line. 15 Q. And in what area or areas of the UNICOR facility 16 was Lokweld utilized? 17 A. In our midwest -- midwest post forming machine. 18 Q. Where is that located? 19 A. It was located right below the mezzanine on the 20 factory floor. 21 Q. And explain to me how the Lokweld was utilized in 22 the post forming operation with that machine. 23 A. We had drums, 55-gallon drums, and we kept them in 24 a flammable cabinet. And it was pumped from there into the 25 spray booth, where automatic heads sprayed the glue onto the</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. And am I correct that there was no training 2 provided to inmates regarding the circumstances under which 3 they might want to use a mask? 4 A. That would also be in our safety videos or through 5 the foremen themselves. 6 Q. But, to your knowledge, there was nothing in the 7 safety videos dealing with when to use a mask and when not 8 to, was there? 9 A. I don't know. I didn't watch a lot of videos. I 10 was usually working, and they are showing them every month. 11 Q. So if that's in there, you're not personally aware 12 of it. 13 A. No. 14 Q. And you have no personal knowledge of any 15 supervisor providing any training regarding when an inmate 16 would want to utilize a mask during operations at UNICOR. 17 Is that a correct statement? 18 A. Yes. 19 Q. Were there any policies in place at UNICOR 20 regarding requirements for clothing? 21 A. Requirements for clothing? 22 Q. Um-hum. 23 A. They had to wear tight-fitting clothing. 24 Q. To avoid -- 25 A. Around -- working around machinery.</p>	<p style="text-align: right;">Page 20</p> <p>1 particle board and onto the laminate. And then it would go 2 through a drying tunnel, and then they would put the piece 3 of laminate on top of the particle board and send it down 4 the line, put it through a pinch roller, where it would 5 pinch the two together, and it would go down the line 6 further, and then there would be a -- heaters in the post 7 forming part of the machine where it would bend the laminate 8 around the edge of the particle board. It was a rounded 9 edge. 10 Q. Was Lokweld used in any other area of the 11 facility? 12 A. It was used in another part of the factory. 13 Special projects area. 14 Q. How was it utilized there? 15 A. We would make furniture for different parts of the 16 institution, and they would get some of the Lokweld and put 17 it in -- a small amount in a five-gallon bucket, and they 18 would take a roller and roll it onto the laminate or -- and 19 glue it onto the particle board that way. 20 Q. So the Lokweld would be transferred to a 21 five-gallon bucket, and then that five-gallon bucket would 22 be positioned in the special projects area? 23 A. Yes. 24 Q. And how did the inmates apply the Lokweld? Did 25 they take a brush, dip it in the bucket?</p>

<p style="text-align: right;">Page 21</p> <p>1 A. Took a roller, usually a small roller, dipped it 2 in the bucket, then rolled it onto the laminate or onto the 3 particle board.</p> <p>4 Q. Was there any requirement that inmates use any 5 type of a mask in that operation?</p> <p>6 A. No.</p> <p>7 Q. To your knowledge, was there any specific training 8 provided regarding the use of Lokweld?</p> <p>9 A. No.</p> <p>10 Q. Did you ever have any conversations with Robin 11 Bevevino regarding air quality, Micore board, or Lokweld?</p> <p>12 A. No. The only thing was that memo that Mr. English 13 did.</p> <p>14 Q. And by "that memo", let me just have you identify 15 that.</p> <p>16 (Discussion held off the record.)</p> <p>17 Q. I'm going to show you what was previously marked 18 as Housler Deposition Exhibit 2. And tell me if that's the 19 memo to which you're referring. And for clarification --</p> <p>20 A. The date is not right.</p> <p>21 Q. The date is wrong?</p> <p>22 A. Yeah, the date is wrong.</p> <p>23 Q. That memo, am I correct, would have been dated 24 sometime in April of 2003?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. (Witness complies.) I can't think what the other 2 one was right now. I thought there was a third one. It 3 might come to me.</p> <p>4 Q. Okay. In any case, your recollection is that 5 after you received a copy of the memo that's been marked as 6 Housler Exhibit 2, you ordered new MSDS sheets for Micore 7 board and for Lokweld.</p> <p>8 A. Yes.</p> <p>9 Q. Other than that, did you take any other action?</p> <p>10 A. No.</p> <p>11 Q. I'm going to show you what was previously marked 12 as Housler Exhibit 1. This is a document received from the 13 U.S. Department of Labor, Occupational Safety and Health 14 Administration. And, actually, there's three pages, I 15 think, to that document. Let me put those together for you. 16 Take a minute and review Housler Exhibit 1 and tell me if 17 you have ever seen that before.</p> <p>18 A. (Witness complies.) No, I haven't seen -- this is 19 all together?</p> <p>20 Q. Yes.</p> <p>21 A. Oh.</p> <p>22 (Discussion held off the record.)</p> <p>23 A. No, I -- I have never seen this.</p> <p>24 Q. Take a look at the first page of Housler Exhibit 25 1. You'll see that there's a handwritten narrative there</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. All right. And as I understand it from counsel, 2 what happens is when that memo is reprinted from the 3 computer system, there's an automatic date update. That's 4 why you're seeing a 2006 date.</p> <p>5 So with that clarification and that correction, is 6 that the memo --</p> <p>7 A. Yes.</p> <p>8 Q. -- that you're referring to?</p> <p>9 A. It looks like it, yes.</p> <p>10 Q. Okay. Did you personally investigate or look into 11 any of the matters described in the memo that's been marked 12 as Housler Exhibit 2?</p> <p>13 A. I would have talked to Miss Forsyth about that, 14 because I know she got one.</p> <p>15 Q. And other than discussing this memo with 16 Ms. Forsyth, did you take any further action regarding the 17 content of the memo?</p> <p>18 A. With Mr. Bevevino?</p> <p>19 Q. With anyone.</p> <p>20 A. I ordered -- I called and got new -- new upgraded 21 MSDS sheets on the Micore, the Lokweld, and -- I forgot what 22 the other one was now.</p> <p>23 Q. There was some other material? Go ahead. If you 24 would like to look at Exhibit 2 to try to refresh your 25 recollection.</p>	<p style="text-align: right;">Page 24</p> <p>1 describing conditions at the UNICOR facility. And if you'd 2 review that and then tell me if there's anything in that 3 description with which you would disagree factually.</p> <p>4 A. (Witness complies.) I don't -- what -- what is 5 that right there (indicating)?</p> <p>6 Q. BOP. Bureau of Prisons staff.</p> <p>7 A. I didn't -- I never heard about any complaining 8 about any irritation of their eyes or their skin. I mean, 9 we had a dust-collection system in there that would suck 10 everything out of the air that I ever saw.</p> <p>11 Q. Do you have any knowledge, Mr. Sapko, of any 12 complaints of skin, eye, or respiratory irritation?</p> <p>13 A. No. I never heard anybody complain about it.</p> <p>14 Until Michael Hill.</p> <p>15 Q. You learned of Mr. Hill. Did you learn of any 16 other complaints?</p> <p>17 A. There was a few others after Mr. Hill. I think 18 Mr. -- another Mr. Hill, Mr. Ward, and Mr. Kelly.</p> <p>19 Mr. Siggers.</p> <p>20 Q. I understand that there was some air testing done 21 in connection with the OSHA inspection. Do you have any 22 knowledge of that?</p> <p>23 A. Some, yes.</p> <p>24 Q. What is the extent of your knowledge regarding the 25 air quality testing?</p>

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<p style="text-align: right;">Page 25</p> <p>1 A. That they came in and didn't really find very 2 much.</p> <p>3 Q. Prior to the -- let me ask you, do you have any 4 knowledge of any air quality testing prior to 2003, when 5 OSHA inspected?</p> <p>6 A. Just Microbac Labs in 2001.</p> <p>7 Q. And that was testing performed after an OSHA 8 complaint?</p> <p>9 A. I believe it was.</p> <p>10 Q. Did the staff at UNICOR make an effort to 11 essentially clean up the facility prior to the air quality 12 testing in 2001 and then again in 2003?</p> <p>13 A. No. No.</p> <p>14 Q. When did furniture manufacturing end at the UNICOR 15 facility at McKean?</p> <p>16 A. I think it might have been a year ago.</p> <p>17 Q. Is the dust control system that was in place at 18 the time furniture was manufactured still there?</p> <p>19 A. Yes.</p> <p>20 Q. Is it utilized for the current operations?</p> <p>21 A. One -- one of them is and one of them is not. We 22 still --</p> <p>23 Q. Which one is still there and in use?</p> <p>24 A. I don't know how you want me to describe that.</p> <p>25 Q. Were there two -- two dust-collection systems?</p>	<p style="text-align: right;">Page 27</p> <p>1 department.</p> <p>2 Q. And you indicated that everyone involved in the 3 management there and the staff, they would have had some 4 responsibility for safety and health.</p> <p>5 A. Yes.</p> <p>6 Q. All right. Did you ever have any discussions with 7 Ms. Forsyth regarding air quality testing?</p> <p>8 A. Just -- you mean from the reports from Microbac 9 or --</p> <p>10 Q. Well, let me ask you the more specific question. 11 Did you ever discuss whether air quality testing should be 12 performed?</p> <p>13 A. In what time frame? I mean --</p> <p>14 Q. At any time. But let's --</p> <p>15 A. No.</p> <p>16 Q. I'll narrow it between 2001 and the end of 2003.</p> <p>17 A. I did not, no.</p> <p>18 Q. Did she ever express any views to you as to 19 whether she thought air quality testing was necessary or 20 appropriate?</p> <p>21 A. Well, I think once they got the report, anonymous, 22 that went into OSHA, they decided we would have it 23 voluntarily tested.</p> <p>24 Q. Do you know -- well, I take it you are surmising 25 that. My question is, did you actually discuss that</p>
<p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. Were they identical in design?</p> <p>3 A. Yes.</p> <p>4 Q. All right. And now there's only one system in 5 use?</p> <p>6 A. They are both still there. The one, we took out a 7 lot of the ductwork, but it still can be hooked up and be 8 used.</p> <p>9 Q. And the other dust-collection system that was in 10 place during furniture manufacturing, it's still there and 11 still being used.</p> <p>12 A. Yes.</p> <p>13 Q. All right. Has there been any modification to its 14 design?</p> <p>15 A. No. Just different ductwork, might be, to put it 16 to different types of machines. We moved machinery around.</p> <p>17 Q. Okay. Are table saws still used in connection 18 with manufacturing operations?</p> <p>19 A. There's a table saw, radial arm saw.</p> <p>20 Q. Okay.</p> <p>21 (Discussion held off the record.)</p> <p>22 Q. Who was principally responsible for matters of 23 occupational safety and health at the UNICOR facility? In 24 let's say, you know, 2001 through the end of 2003?</p> <p>25 A. Steve Housler was the head of the safety</p>	<p style="text-align: right;">Page 28</p> <p>1 matter --</p> <p>2 A. No.</p> <p>3 Q. -- with Miss Forsyth?</p> <p>4 A. No.</p> <p>5 (Discussion held off the record.)</p> <p>6 MR. LANZILLO: That's all I have, Mr. Sapko.</p> <p>7 Thank you.</p> <p>8</p> <p>9 CROSS-EXAMINATION</p> <p>10 BY MR. COLVILLE:</p> <p>11</p> <p>12 Q. Mr. Sapko, let me ask you just a couple questions.</p> <p>13 The memorandum from Mr. English concerning the Bevevino 14 discussion, did that memorandum reach your desk before or 15 after the OSHA investigation of 2003?</p> <p>16 A. It would have got to me --</p> <p>17 (Witness asked for clarification by the reporter.)</p> <p>18 A. I said it would have been after, because</p> <p>19 Mr. Clabaugh came in on the 16th, and Mr. --</p> <p>20 Q. So when you were asked about what actions you took 21 or what investigation you did as a result of that, 22 contemporaneously with receiving that memo you had an 23 understanding that OSHA was there investigating the very 24 complaints that are identified in the memorandum.</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 29</p> <p>1 Q. Okay. And then did you at some point receive a 2 summary of OSHA's investigation, its findings, citations, et 3 cetera?</p> <p>4 A. Yes, we did. And we posted it in the UNICOR 5 factory so all the inmates could see it.</p> <p>6 Q. Now, there were a number of citations, and I guess 7 there was also a set of recommendations that OSHA provided 8 to BOP.</p> <p>9 A. Yes.</p> <p>10 Q. Were you involved in implementing or making any of 11 the corrections that were -- regarding the citations or the 12 recommendations that OSHA provided?</p> <p>13 A. Through the staff in our department, we got all of 14 the recommendations completed.</p> <p>15 Q. It was your understanding of the recommendations 16 that they were required or --</p> <p>17 A. No, they were only recommendations. OSHA came in 18 and said, you know, everything we were doing was right and 19 these were just recommendations. Some of them -- some of 20 them were to do with the machinery, which I thought OSHA 21 should have taken that to the machine maker.</p> <p>22 Q. Now, in spite of that, do you know whether or not 23 any of the recommendations were implemented?</p> <p>24 A. They were all implemented.</p> <p>25 Q. That's, again, voluntarily.</p>	<p style="text-align: right;">Page 31</p> <p>1 after the OSHA investigation?</p> <p>2 A. I think it was made after.</p> <p>3 Q. All right. Do I take it his complaint was the 4 complaint we're all here about today; that he believed he 5 was being exposed to hazardous --</p> <p>6 A. Yes.</p> <p>7 Q. -- air quality; Micore product, Lokweld?</p> <p>8 A. Yes.</p> <p>9 Q. All right. As a result of those complaints, what 10 did you do?</p> <p>11 A. At that meeting, I didn't do anything.</p> <p>12 Mr. Housler did all the talking at that meeting. I was 13 there to give any information that he would have had about 14 UNICOR.</p> <p>15 Q. What happened ultimately?</p> <p>16 A. Mr. Housler told him that if you -- you know, he 17 told him we did testing in 2001, and we have a 18 dust-collection system there that is twice the size that we 19 actually need for the factory, and he -- but if he still 20 thought that he had a complaint, that we would take him out 21 of UNICOR until we -- OSHA would come in and do their 22 testing.</p> <p>23 Q. So then his complaint was before OSHA came in?</p> <p>24 A. No. It was after OSHA. Because OSHA was going to 25 be coming in.</p>
<p style="text-align: right;">Page 30</p> <p>1 A. Voluntarily, yes.</p> <p>2 Q. Now, with regard to the citations that were 3 issued, concerning their findings or the investigation, do 4 you know of any citation issued that wasn't corrected by 5 BOP?</p> <p>6 A. No, I do not. No, they were all corrected.</p> <p>7 Q. At any time prior to Michael Hill coming and 8 complaining to you, did any inmate or staff member ever 9 complain to you about their belief that they were injured 10 while working on the work floor as a result of Micore 11 products or Lokweld products?</p> <p>12 A. No.</p> <p>13 Q. Did anybody come to you, staff or inmate, and ask 14 that they be provided with a respirator while working with 15 Lokweld or Micore board?</p> <p>16 A. No. No one ever came to me.</p> <p>17 Q. When Michael Hill came to complain to you about -- 18 what did he complain to you about?</p> <p>19 A. He didn't actually complain to me personally. He 20 sent a BP-8, I think, to -- I don't know who it actually 21 went to. But we had a meeting up -- up in one of the units. 22 They called all the -- called the safety department, his 23 unit manager, myself, Miss Fantasky, and we went over his 24 complaint.</p> <p>25 Q. And was Michael Hill's complaint made before or</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. I'm not following that. If you told him that he 2 could -- that we would take him off the work floor until 3 OSHA came in and did their testing --</p> <p>4 A. Because we knew OSHA was coming in to test.</p> <p>5 Q. Okay. I see.</p> <p>6 A. And we knew OSHA was coming in to test, and we 7 actually, I think -- a couple days later they told him that 8 he could come back to work, but he did not want to come back 9 to work until he -- until the OSHA tests were in.</p> <p>10 Q. All right. Ultimately, the OSHA tests were 11 conducted, and we have those results.</p> <p>12 A. Yes.</p> <p>13 Q. Were those results shared with Mr. Hill?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. And did -- was he offered or allowed to come back 16 at that point?</p> <p>17 A. Well, yes, after that. But, I mean, he came back 18 before that and wanted to get hired back in UNICOR. And we 19 told him -- I told him that the OSHA report wasn't in. Miss 20 Forsyth later told me that he could come in and work.</p> <p>21 MR. COLVILLE: That's all I have. Doug, do you 22 have anything?</p> <p>23 MR. GOLDRING: No, nothing.</p> <p>24</p> <p>25 REDIRECT EXAMINATION</p>

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<p style="text-align: right;">Page 33</p> <p>1 BY MR. LANZILLO:</p> <p>2</p> <p>3 Q. Just a quick follow-up to make sure I'm clear on 4 the sequence here.</p> <p>5 There was a Complaint to OSHA in 2001, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Then there was some other complaint prior to OSHA 8 notifying you that they were coming in, in 2003. Correct?</p> <p>9 A. I'm not sure. I know there was an anonymous one, 10 but I don't know what the time frame was.</p> <p>11 Q. All right. Well, you've got a 2001 complaint, and 12 then there was an OSHA inspection commencing in April of 13 2003. Right?</p> <p>14 A. (Witness nods head.)</p> <p>15 Q. You have to say yes.</p> <p>16 A. Oh. Yes. Sorry.</p> <p>17 Q. Is it your understanding that that OSHA inspection 18 was prompted by someone's complaint?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And then after you learned that OSHA was 21 coming in to inspect, you received a complaint from Kenny 22 Hill.</p> <p>23 A. I think it was Michael Hill.</p> <p>24 Q. Michael Hill, excuse me. Michael Hill. Yes.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. And certain violations dealing with the lack of a 2 system for notification of hazards associated with products 3 such as Lokweld and Micore board, they were described as 4 "other"? Do you remember that?</p> <p>5 A. No.</p> <p>6 Q. Okay. When is the last time you reviewed the OSHA 7 report?</p> <p>8 A. Probably after we had all of the recommendations.</p> <p>9 MR. LANZILLO: That's all. Thank you.</p> <p>10 MR. COLVILLE: No other questions. We'll waive.</p> <p>11</p> <p>12 (Deposition concluded at 12:40 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. Okay. And you also received, after that point, 2 complaints from other inmates similar to Michael Hill's 3 complaint.</p> <p>4 A. Yes.</p> <p>5 Q. Now, in response to one of Mr. Colville's 6 questions, you indicated that the folks at OSHA told you -- 7 and this is a quote, I think. Quote, everything we were 8 doing was all right -- or was right, but they had some 9 recommendations to make?</p> <p>10 A. They didn't actually tell me that, you know. They 11 just -- there was recommendations. I just thought 12 everything was okay, if they were only recommendations.</p> <p>13 Q. Would you agree with me that OSHA issued a number 14 of citations to the facility?</p> <p>15 A. Yes.</p> <p>16 Q. Many of which were classified as serious 17 violations.</p> <p>18 A. What do you mean by "serious"?</p> <p>19 Q. That OSHA described a number of violations as 20 serious violations in their report to you. Are you aware of 21 that?</p> <p>22 A. I didn't realize they were that serious, no.</p> <p>23 Q. Okay. Did you consider any of the violations 24 identified in the OSHA report to be serious violations?</p> <p>25 A. Some possibly could be, yes.</p>	

A	B	C	D	E
<p>A</p> <p>about 4:15 8:22 9:12 9:14 13:1,12 14:2,23 15:8,20 16:14 22:13 24:7,8,13 28:20 30:9 30:17,18 31:4,13 above 11:15 action 22:16 23:9 actions 3:8 28:20 actually 23:14 27:25 30:19,20 31:19 32:7 34:10 address 4:6 Administration 23:14 affirmative 3:19 after 9:19 10:4,8 11:21 12:24 16:21 17:8 23:5 24:17 25:7 28:15,18 31:1,2,24 32:17 33:20 34:1 35:8 again 16:8 25:12 29:25 ago 25:16 agree 34:13 ahead 22:23 air 14:19 17:1 21:11 24:10,20,25 25:4,11 27:7,11,19 31:7 al 1:3,5 allowed 32:15 ambiguous 3:22 amount 20:17 Andrew 4:5 anonymous 17:4 27:21 33:9 another 20:12 24:18 answer 3:18,20 anybody 17:22 24:13 30:13 anyone 22:19 anything 8:10,15 15:7 16:4 17:1 24:2 31:11 32:22 anywhere 12:8 apply 20:24 appropriate 15:13 27:20 Approximately 4:21 April 9:6 13:11 21:24 33:12 area 6:6 19:15 20:10 20:13,22 areas 11:2 19:15 arm 19:4 26:19 around 9:6,11 11:20 13:6,11,23 14:6 15:24 18:25,25 20:8 26:16 asked 28:17,20</p> <p>assistant 4:23 5:1 associated 16:5,11 17:2 17:17 35:2 attend 15:12 attended 5:14,21 Attorney 1:19 AUSA 1:18 automatic 19:25 22:3 available 17:22 avoid 18:24 aware 15:4 16:18 18:11 34:20 a.m 1:10</p> <p>B</p> <p>back 17:4,5 32:8,8,15 32:17,18 baggage 6:15 Basically 6:20 becoming 4:17 5:1 before 1:9 6:9 17:8,10 23:17 28:14 30:25 31:23 32:18 being 5:1 9:14,15 26:11 31:5 belief 30:9 believe 13:11 15:1 17:3 25:9 32:14 believed 31:4 below 19:19 bend 20:7 between 17:11 27:16 Bevevino 8:22 9:4,8,10 9:14 21:11 22:18 28:13 bigger 14:22 blow 14:19,22 blowing 15:8 board 9:15,16 10:21 11:1,3 12:3,6,15 13:12,15,18,22 14:13 15:16,19 16:1,7,12 16:19,23 17:2,18 20:1,3,8,19 21:3,11 23:7 30:15 35:3 boards 12:7,9,12 book 9:7 booth 19:25 BOP 24:6 29:8 30:5 both 3:12 9:21 26:6 BP-8 30:20 Bradford 4:7 5:11 6:23 7:5,10 brush 20:25 bucket 20:17,21,21,25 21:2 Bureau 24:6 by-product 16:22 by-products 16:19</p> <p>C</p> <p>C 1:18 cabinet 19:24 called 22:20 30:22,22 came 9:9 12:24 25:1 28:19 29:17 30:16,17 31:23 32:3,17 carcinogenic 9:18 carpentry 6:2 case 23:4 caught 19:1 cause 16:16 Central 5:11 certain 9:6 11:2 13:4 35:1 certificate 5:23,24 6:1 cetera 29:3 chart 8:5 Chemical 6:8,13,22 7:3 7:10 chlorination 7:1 Christian 5:11 circumstances 18:2 citation 30:4 citations 29:2,6,11 30:2 34:14 City 6:23 7:5,10 Clabaugh 28:19 clarification 21:19 22:5 28:17 classified 34:16 clean 25:11 clear 3:14 33:3 clearly 3:24 clothing 13:24 15:8 18:20,21,23 19:1,7 college 5:8,9,15,18,21 5:22 Colville 1:18 2:5 28:10 32:21 35:10 Colville's 34:5 come 9:5 23:3 30:13 31:21 32:8,8,15,20 coming 14:12,13,14 30:7 31:25 32:4,6 33:8,21 commenced 13:11 commencing 1:10 33:12 Commonwealth 1:10 community 5:9,22 complain 24:13 30:9,17 30:18,19 complained 15:22 complaining 24:7 30:8 complaint 15:20,21,25 16:3,12,25 17:3,4,5,8 17:11 25:8 30:24,25 31:3,4,20,23 33:5,7</p> <p>D</p> <p>D 2:1 date 21:20,21,22 22:3,4 dated 21:23 day 11:19 days 32:7 DC 1:22 dealing 18:7 35:1 Debbie 7:21 December 1:10 decided 27:22 Defendants 1:6,18 defensive 9:10</p> <p>E</p> <p>E 2:1 each 3:15 edge 20:8,9 education 5:7,20 effects 16:5,11 effort 25:10 either 7:10 10:15</p>				

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